

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6018) that:

1. Carrier violated the Clerks' Rules Agreement at Savanna, Illinois when it compensated employe E. S. Anderson at the straight time rate of pay for service performed on his assigned rest day.

2. Carrier shall compensate employe E. S. Anderson an additional four (4) hours at the straight time rate of pay of Yard Clerk Position No. 2501 for the following days:

Saturday and Sunday July 10 and 11, 1965
Saturday July 31, 1965.

EMPLOYEE'S STATEMENT OF FACTS: Employe E. S. Anderson is the regularly assigned occupant of Yard Clerk Position 2501 from 7:45 AM to 3:45 PM, Monday through Friday, with rest days of Saturday and Sunday.

The following positions are involved in the instant claim:

POS. NO.	TITLE	OCCUPANT	HOURS OF SERVICE	REST DAYS
2501	Yd Clk	E. Anderson	7:45 AM to 3:45 PM	Sat-Sun
Rel #4		J. Everhart		
Relieves Yd Clk	2501	7:45 A—3:45 P	Sat-Sun	
Relieves Yd Clk	2502	7:45 A—3:45 P	Monday	
Msgr.	2516	7:45 A—3:45 P	Tuesday-Wed.	

J. Everhart is regularly assigned to Relief Assignment No. 4 with rest days of Thursday and Friday.

On Saturday and Sunday, July 10 and 11, 1965, on which days Relief Position No. 4 relieves employe Anderson on Position 2501, employe J. Everhart was absent on vacation. Employe Anderson, the regular occupant of

have conceivably lasted for 1 week, 1 month, 1 year or longer dependent upon the circumstances which brought it about.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of October 26, 1965.

OPINION OF BOARD: Claimant worked on his rest days on three days in July, 1965, relieving twice on an employee's vacation and once when the employee filled another position. Claimant was paid pro rata, but requested time and one-half.

Rule 33(c) provides:

(c) Service rendered by an employee on his assigned rest day, or days, relieving an employee assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is the higher, with a minimum of eight (8) hours at the rate of time and one-half.

In denying the claim on the property, Carrier stated, in its letter of July 23, 1965, in part:

"You exercised your seniority to relief position working 7:45 A.M. to 3:45 P.M. date of claim and did so on your own free will and accord in connection with Rule 9-G of Clerk's Agreement.

"It is our position that Yard Clerks in Savanna Yard who exercise seniority in accordance with Rule 9-G, taking temporary vacancy, are assigned thereto on a straight time basis."

In its ex parte submission Carrier stated that, based upon the "specific provisions of aforementioned Rule 32(d), Claimant Anderson received the straight time rate of pay for the service he performed . . . because such work was performed due to his moving from one assignment . . . to another . . . as a result of an exercise of seniority under the provisions of Rule 9(g) . . ."

Rule 9(g) concerns the filling of temporary positions by the senior qualified employee. Rule 32(d) provides as follows:

"(d) Employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 27."

Rule 33(c) is an unqualified guarantee of premium pay for working a rest day in relief of "an employee assigned to such day." Rule 32(d) is a qualified guarantee of premium pay for work on the sixth and seventh days, since these are not overtime days if "work is performed by an employee due to moving from one assignment to another." (If an employee moves to another assignment **before** earning his rest days, he acquires the rest days of the new assignment.)

Claimant's rest days were Saturday and Sunday. By working Monday to Friday on his regular assignment he had earned these days, and when on a Saturday he relieved another employee, Claimant came squarely within the purview of 33(c).

There have been many prior Board decisions on the rest-day issue, both granting and denying the claim. The parties involved in this case have had the same experience. Hence one cannot simply accept an earlier decision as *res judicata*.

Some of the older decisions which have been cited in later cases have been based on different Rules. For example, the much-quoted decision of Referee Leiserson, Award 6503, held that a claimant was not entitled to premium pay on the rest days which he voluntarily chose to work. But the Agreement in that case contained a Rule not present in the issue before us, as may be seen from the following statement taken from "Position of Carrier" in No. 6503:

"Rule 20 of the current agreement provides that the Carrier will not be penalized by the payment of punitive overtime in the exercise of seniority rights for personal convenience of employees. This means that where employees exercise their seniority rights in accordance with Rules 6, 8, 10, 11, 13, 15, and 26, the Carrier will not be required to pay time and one-half even though such employee might, while transferring from one job to another, run afoul of Rule 37."

Similarly in Award 12003 Referee Stark wrote that "the common thread running through the sustaining awards is that the employee on temporary assignment had no real choice in determining whether he should accept that assignment . . ." But Referee Stark was deciding a case under an Agreement which provided in Article II, Section 16, that "employees accepting positions in the exercise of their seniority will do so without expense to the Company."

In the case before us there is an unambiguous rest-day Rule, and no clause elsewhere in the Agreement limiting it. Rule 33(c) is a special rule which, it has been consistently held by this Division, must take precedence over general Rules. There is no reason to doubt that the signers of this Agreement meant to say what Rule 33(c) does say. The fact that the premium-pay requirement in Rule 32 is a qualified one strengthens the import of Rule 33(c), which is unqualified.

Carrier cites many Rules in support of its position, and in its submission it states that Rule 32(d) "through the exception contained therein, which is controlling in this case, prohibits allowance of the overtime payments here being claimed." Carrier does not discuss Rule 33(c) under which the claim also was filed and which we hold to be dispositive of the issue. Since Rule 32 generally treats of a different problem (namely, work in excess of 8 hours per day, and 40 hours or 5 days per week), it cannot be used as the basis for determining an issue coming under a different and explicit rule. Moreover, there is no contractual basis for transplanting the qualification stated in Rule 32 to Rule 33(c), when the parties made no such qualification.

Some of the prior holdings denying claims were based upon the application of Rule 32 rather than 33(c). But we find ourselves in accord with Award 10771, in which the Board stated:

"Even if it could be construed that Perry changed assignments when he filled a temporary vacancy, we do not see how this could operate as an exception to the clear and specific provision in Rule 33(c) that service on rest days shall be compensated at the rate of time and one-half. Awards 9487, 9942 and 9943 among others.

The rule is universally accepted that special rules prevail over general rules . . ."

An employee moving to a different assignment during his work week adopts the rest days of that assignment, and does not receive premium pay when his former rest days arrive, according to Rule 32. But quite as emphatically, an employee effective on his rest day who acts to relieve another (not having prior thereto moved to that assignment) must receive time and one-half, according to 33(c). That rule does not distinguish between employees who sought the work and those who did not.

To deny this claim would render null and void a specific Rule in the Agreement, obviously placed there for the purpose for which it is here invoked. Since Claimant on his rest day did relieve another employee, Rule 33(c) must govern.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

Thatt his Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1968.